

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO ALLEGED	)	
UNAUTHORIZED CHARGES OF HIGHVIEW	)	CASE NO. 91-317
SEWER DISTRICT, INC.	)	

O R D E R

On September 18, 1991, the Commission initiated this investigation to determine whether Highview Sewer District, Inc. ("Highview") has charged, or is attempting to charge as a condition of service, fees for sewer capacity which have not been approved by the Commission nor filed in its current tariff in violation of KRS 278.160.

This investigation was precipitated by information received by the Commission from Dairy Mart Southeast ("Dairy Mart") concerning sewer service to one of its stores. Dairy Mart alleged that Highview had informed Dairy Mart that it had no sewer capacity available and that Dairy Mart would have to purchase capacity from a developer, John Treitz and Sons, Inc. ("JTS"). Dairy Mart subsequently paid JTS \$9,500, and Highview began service.

The Commission subsequently discovered that by an agreement dated October 19, 1988, Highview transferred all of its excess capacity to JTS. Pursuant to the agreement, JTS has the right to use the excess capacity of Highview's plant up to a total of 29,600 gallons per day. According to the agreement, JTS sought

the excess sewer capacity for residential subdivisions on or near areas served by Highview. JTS paid no money for the excess capacity and JTS does not pay Highview any monthly service fee. The agreement cites as consideration for the transfer of excess capacity JTS's promise to cause all homes which are built in its subdivisions which are developed by JTS to connect to the Highview plant. Highview never submitted this agreement for approval by the Commission and has no provision concerning the agreement in its tariff.

The Commission additionally learned that Highview had charged a customer, Highview Meat Market, a \$1,000 charge which was not authorized in its tariff. This unauthorized charge was unrelated to the facts concerning Dairy Mart and the JTS agreement.

Based upon the information provided by Highview, the Commission, by Order dated March 24, 1992, found that a prima facie showing had been made that Highview had violated KRS 278.160; KRS 278.030; KRS 278.170; and 807 KAR 5:006, Sections 5(1) and 5(2).

An informal conference was held on April 3, 1992, which Commission Staff and Highview attended. Dairy Mart failed to attend the informal conference. Subsequent to the informal conference, Commission Staff, Highview, and Dairy Mart entered into a Settlement Agreement resolving all outstanding issues in this case. Highview and Dairy Mart entered into the Settlement Agreement with the understanding that its effectiveness is conditioned upon its acceptance by the Commission. The Settlement Agreement was filed with the Commission on July 14, 1992. A

copy of the Settlement Agreement is attached hereto and incorporated herein as Exhibit A.

In summary, the Settlement Agreement provides:

1. Highview will immediately cease and desist from requiring potential customers to obtain as a condition of service a release of excess capacity from JTS.

2. Highview will terminate the Agreement to Provide Capacity with JTS.

3. Highview will refund to Highview Meat Market the unauthorized \$1,000 charge.

After consideration of the record in this proceeding, the Settlement Agreement, and the underlying factual and legal analysis necessary to evaluate the Settlement Agreement, the Commission finds that:

1. Highview is willing to take certain actions in order to remediate and cure the alleged violations.

2. The Settlement Agreement is reasonable, supported by the evidence of record, is in accordance with the law, and does not violate any regulating principle.

3. The actions required by the Settlement Agreement will result in fair, just, and reasonable rates and service to Highview's customers.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement is hereby adopted and approved as settlement of all outstanding issues in this proceeding.

2. Highview shall immediately cease and desist from requiring potential customers to obtain as a condition of service a release of excess capacity from JTS.

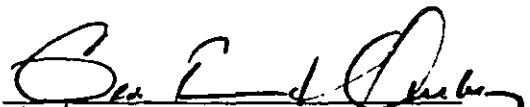
3. Within 20 days of the date of this Order, Highview shall terminate the Agreement to Provide Capacity with JTS.

4. Within 30 days of the date of this Order, Highview shall pay \$1,000 to the Highview Meat Market, which represents a refund of what was received by Highview as an aid-in-construction charge.

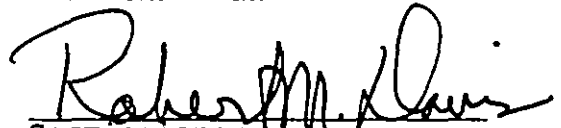
5. Within 40 days of the date of this Order, Highview shall file proof of compliance with ordering paragraphs 3 and 4 of this Order.

Done at Frankfort, Kentucky, this 10th day of August, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

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SETTLEMENT AGREEMENT

WHEREAS, Highview Sewer District, Inc. ("Highview") by Order of the Commission dated March 24, 1992, was directed to appear at a hearing scheduled for May 19, 1992, in order to show cause why Highview should not be penalized pursuant to KRS 278.990 for its alleged failure to comply with KRS 278.160, KRS 278.030, and KRS 278.170; and 807 KAR 5:006, Section 5(1) and Section 5(2); and

WHEREAS, Highview denies that it has committed any violation but is willing to take certain actions in order to remediate and cure the alleged violations; and

WHEREAS, Highview and counsel for the Commission have met and agreed to the following in order to resolve all outstanding issues in this proceeding;

NOW, THEREFORE, BE IT RESOLVED:

1. Highview agrees to terminate the Agreement to Provide Capacity entered into as of October 19, 1988, with John Treitz and Sons, Inc. ("JTS"). This Agreement to Provide Capacity shall be terminated within 20 days of entry of an Order of the Commission approving and adopting this Settlement Agreement.

2. Highview agrees that it will immediately cease and desist from requiring potential customers to obtain as a condition of service a release of excess capacity from JTS upon entry of an Order of the Commission approving and adopting this Settlement Agreement.

3. Highview agrees to pay \$1,000 to Highview Meat Market, 7202 Fegenbush Lane, Louisville, Kentucky 40228, which represents a refund of what was received by Highview as an aid-in-construction charge. This shall be paid within 30 days of entry of an Order of the Commission approving and adopting this Settlement Agreement.

4. Upon termination of the Agreement to Provide Capacity between Highview and JTS, and payment to Highview Meat Market of \$1,000, this case is hereby settled as to all persons involved in the facts of this case and all outstanding issues resolved, with prejudice, notwithstanding any other provision of this Settlement Agreement to the contrary. Proof of the termination of the Agreement to Provide Capacity between Highview and JTS and the required payment herein shall be forwarded by Highview to the Commission's offices within 40 days of entry of an Order of the Commission approving and adopting this Settlement Agreement.

5. It is agreed that the proposed Settlement Agreement is submitted for purposes of this case only and is not deemed binding upon the signatories hereto in any other proceeding, nor is it to be offered or relied upon in any other proceeding involving the Highview Sewer District or any other utility.

6. It is agreed that if the Commission issues an Order adopting this proposed Settlement Agreement in its entirety, Highview shall not file an application for a rehearing with the Commission, or appeal to the Franklin County Circuit Court from such Order.

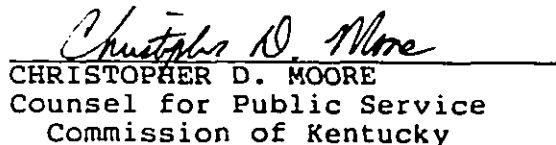
7. It is agreed that if this proposed Settlement Agreement is not adopted in its entirety, Highview reserves the right to withdraw from it and require that hearings go forth upon all or any matters involved herein, and in such event, this Settlement Agreement shall not be deemed binding upon the signatories hereto nor shall same be admitted into evidence or referred to or relied on in any manner by any signatory hereto.

8. All of the signatories hereto agree that the foregoing Settlement Agreement is real and in the best interest of all concerned, and urge that the Commission adopt the Settlement Agreement in its entirety.

AGREED TO BY:

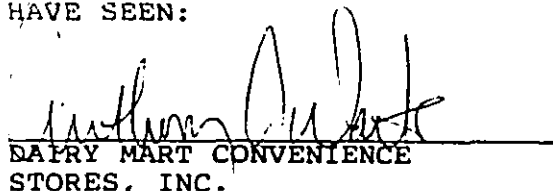
 Pres.  
HIGHVIEW SEWER DISTRICT, INC.

7/8/92  
Date

  
CHRISTOPHER D. MOORE  
Counsel for Public Service  
Commission of Kentucky

7/14/92  
Date

HAVE SEEN:

  
DAIRY MART CONVENIENCE  
STORES, INC.

6/28/92  
Date